

STATE OF CALIFORNIA

GRAY DAVIS, Governor

DEPARTMENT OF INDUSTRIAL RELATIONS
CALIFORNIA APPRENTICESHIP COUNCIL
 455 GOLDEN GATE AVENUE, 8TH FLOOR
 SAN FRANCISCO, CA 94102
 (415) 703-4920



ADDRESS REPLY TO:
 P.O. Box 420603
 San Francisco, CA 94142

Rec'd 2/16/01
 1873

February 9, 2001

CC: DSNIP

**APPRENTICESHIP PROGRAM SPONSORS
 AND OTHER INTERESTED PARTIES**

RE: Modifications in Proposed Apprenticeship Regulations
 Resulting from Written and Oral Comments

Dear Interested Party:

The California Apprenticeship Council (Council) proposed changes to Regulations 201, 205, 208, 212, 212.01, 212.2, 212.3, 212.4, 228, 229, 230, 230.1, 230.2, 231 and 234.2 California Code of Regulations, Title 8, Chapter 2, Part I and proposed adoption of Regulations 206, 207, 212.5. Written public comments were accepted by the Council from July 7, 2000, through August 21, 2000, on these proposed changes and the adoption these new regulations. Public hearings on the proposed rulemaking were held on July 26, 2000 in San Diego, and on August 21, 2000, in San Francisco. Oral comments and further written comments were received during those public hearings.

At its meeting on January 25, 2001, the Council reviewed and considered the written comments and transcripts of the oral comments received. The Council adopted certain of the regulations as originally proposed, and proposed the adoption of the remaining regulations with the modifications adopted by the Council after full consideration of comments. The modifications to the proposed regulations 206, 208, 212, 212.01, 212.05, 212.4 and 230.1 adopted on January 25, 2001 are set forth in the attached modified text of the proposed regulations. Please be aware that the attachments do not include the adopted proposed regulations that have not been modified.

In addition, the Council is sending out for comment Commissioner Balgenorth's statement and motion of January 25, 2001, and a letter from Anthony Swope, Administrator Apprenticeship Training, Employer and Labor Services U.S. Department of Labor, dated January 23, 2001.

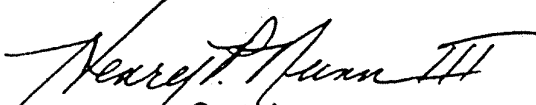
Government Code Section 11346.8(c) provides for an additional written comment period of 15 calendar days regarding the modifications to the proposed regulations.

The Council will accept written comments on the modifications, the Balgenorth statement and the Swoope letter between February 13, 2001 and March 1, 2001. All written comments must be received on or before 5:00 p.m., Thursday, March 1, 2001.

Comments must be addressed to:

HENRY NUNN, Secretary
California Apprenticeship Council
P.O. Box 420603
San Francisco, CA 94142

Sincerely,



Henry Nunn, Secretary
California Apprenticeship Council

Attach.

February 9, 2001

MODIFIED PROPOSED REGULATION

AMENDMENTS

CALIFORNIA CODE OF REGULATIONS

TITLE 8, CHAPTER 2

PART 1. APPRENTICESHIP

**Regulations of the
CALIFORNIA APPRENTICESHIP COUNCIL**

8CCR, Chapter 2, California Apprenticeship Council,
Proposed Amendments and Additions

PROPOSED MODIFICATIONS TO ORIGINALLY NOTICED REGULATION TEXT.
CURRENT PROPOSED ADDITIONS SHOWN WITH DOUBLE UNDERLINE, DELETIONS
WITH DOUBLE STRIKEOUT

PART I. APPRENTICESHIP

206. Approval and Registration of Apprentice Agreements

(a) Agreements approved by Joint Apprenticeship Committee

(1) An apprentice agreement in an approved joint apprenticeship program shall be approved by the joint apprenticeship committee if the agreement complies with the apprenticeship program standards and Chapter 4 of Division 3 of the Labor Code and its implementing regulations under Title 8, California Code of Regulations, Section 200 et seq. and where there is adequate related and supplemental instruction and an assurance of employment to provide on-the-job training.

(2) After approval by the joint apprenticeship committee, the agreement shall be sent to DAS for registration within thirty (30) days of its execution.

(3) DAS shall register the agreement if DAS determines that it was approved in accordance with the requirements set out above, under subsection (a)(1), and it was submitted to DAS within thirty (30) days of its execution.

(4) Within thirty (30) days of receipt of the agreement, DAS shall either register the agreement or return it to the program sponsor with the reasons for non-registration. If, registered, the registration shall be effective as of the date of its execution by the apprentice.

(b) Agreements approved by the Administrator

(1) If there is no joint apprenticeship committee, the apprenticeship agreement shall be sent to DAS for approval by the Administrator within thirty (30) days of its execution, and shall be approved if the Administrator determines that it complies with the requirements set out above, under subsection (a)(1), and it was submitted to DAS within thirty (30) days of its ~~execution~~ execution.

(2) If approved, the agreement shall be considered registered as of the date of its execution by the apprentice. A copy of the approved agreement shall be filed with the CAC for its review. If the Administrator does not approve the agreement it shall not be

registered and shall be returned to the program sponsor within 30 days with the reasons for non-approval.

NOTE: Authority cited: Section 3071, Labor Code. Reference: Sections 3071, 3079 and 3080, Labor Code.

Article 3. Standards for Minimum Wages, Maximum Hours and Working Conditions

Amend section to read:

208. Wages, Employee Benefits, and Other Compensation for Apprentices.

(a) For Apprentices In All Occupations Except The Building And Construction Industry:

For apprentices participating in approved apprenticeship programs in all industries, except the building and construction industry, the beginning wage rate, employee benefits and other compensation, and the progression of those rates, shall be decided by the sponsoring program in consultation with and subject to the approval of the Chief DAS.

(b) For Apprentices In The Building And Construction Industry Employed On Public Works Projects:

For apprentices participating in approved apprenticeship programs in the building and construction industry, the wages and employer payments for employee benefits as defined in 8 C.C.R. § 16000 for regular and overtime work while employed on public works projects within the meaning of Labor Code § 1720 et seq. shall be not less than the per diem wage rates for apprentices in the apprenticeable occupation as determined by the Director of Industrial Relations in the geographic area of the project.

(c) For Apprentices In The Building And Construction Industry Employed On Projects Not Covered By Subsection (b), Above:

The hourly wage package as used herein consists of the total of the wages and employer payments for employee benefits as defined in 8 C.C.R. § 16000. For apprentices participating in approved apprenticeship programs in the building and construction industry, the minimum hourly wage package for apprentices while employed on projects not covered by Subsection (b) above shall be calculated as follows:

(1) ~~The hourly wage package for first period apprentices shall be no less than 140 percent of the annual poverty level rate for a family of three (3) published by the United States Department of Health and Human Services in the February preceding the rate determination, (beginning with the February, 1994 published rate), which annual rate shall then be divided by 1,936 hours to determine the hourly wage package~~ Where the apprentice is

~~covered by a collective bargaining agreement that contains an hourly wage package for apprentices, the minimum hourly wage package shall be in accordance with the terms of the collective bargaining agreement. A starting hourly wage package for first-period apprentices of not less than 40 percent of the prevailing per diem wage package for journeymen in the apprenticeable occupation and geographic area, as determined by the Director of Industrial Relations for purposes of Labor Code § 1720 et seq., using the rate effective on the immediately preceding March 1. At least 65 percent of this amount must be paid directly to the apprentice as taxable wages.~~

(2) A minimum of 85 percent of the hourly wage package as determined by the formula above must be paid directly to the apprentice as taxable wages; ~~Where the apprentice is not covered by a collective bargaining agreement, or the collective bargaining agreement does not contain an hourly wage package for apprentices, the minimum hourly wage package shall be not less than the lower of the following:~~

~~(A) Fifty percent (50%) of the prevailing journeymen's hourly wage package as published by the Director of Industrial Relations for the apprenticeable occupation in the geographic area of the project; or~~

~~(B) If there is a collectively bargained hourly wage package for apprentices in the same apprenticeable occupation and geographic area, the hourly wage package set by the collective bargaining agreement.~~ If there is no prevailing wage rate determined by the Director for journeymen for the apprenticeable occupation and geographic area, a starting wage rate decided by the sponsoring program in consultation with and subject to the approval of the Chief DAS based on consideration of the minimum starting wage for apprentices in the most analogous occupations and geographic areas.

(3) Where an employer elects to satisfy a portion of the hourly wage package by employer payments for employee benefits as defined in 8 C.C.R. § 16000, the payment of such contributions must be verifiable; and the cost of the benefit(s) must be reasonably related to the amount of the contribution(s). The employer shall submit its books and records to an audit by the DAS staff, upon request, to verify such payments;

(4) ~~The hourly wage package for first period apprentices shall be recalculated as of January 1 of every odd numbered year using the formula set out in Subsection (c)(1) above, and shall be based upon the figures published by the United States Department of Health and Human Services in February of the year preceding the recalculation. The recalculated hourly wage package for first period apprentices shall automatically become effective as of January 1 of each year in which it is recalculated for all new apprentices indentured after January 1 of that year.~~ Where an employer elects not to satisfy a portion of the apprentice's hourly wage package by employer payments for employee benefits as defined in 8 CCR § 16000, the employer shall pay the entire hourly wage package directly to the apprentice on the apprentice's paycheck. Where an employer elects to satisfy a portion of the apprentice's hourly wage package by employer payments for employee benefits, the employer shall pay the remainder of the apprentice's hourly wage package directly to the apprentice on the apprentice's paycheck;

(5) ~~Each apprentice shall receive periodic, equal percentage increases in the hourly wage package for each successfully completed period of apprenticeship, subject to the following conditions:~~ The minimum amount of the periodic, equal percentage increases must be sufficient to insure that in no event shall the apprentice's hourly wage package in the final period of apprenticeship be less than 100 percent of the hourly wage package required under Subsection (c)(1), above, in effect during the apprentice's first period of apprenticeship;

~~(A) Where the apprentice is covered by a collective bargaining agreement, the hourly wage package progression schedule shall be in accordance with the terms of the collective bargaining agreement, if contained therein;~~

~~(B) Where the apprentice is not covered by a collective bargaining agreement or where the apprentice is covered by a collective bargaining agreement, but a wage package progression schedule is not contained therein, the hourly wage package pay progression schedule shall be determined by the program sponsor in consultation with and subject to the approval of the Chief. Every pay progression schedule determined in consultation with the Chief shall provide for:~~

~~(i) Increase in the apprentice's hourly wage package of not less than ten percent (10%) of the prevailing journeyman hourly wage package in the apprenticeable occupation per year, where the entry wage package is based upon fifty percent (50%) of the current journeyman hourly wage package; and~~

~~(ii) An hourly wage package in the final period of apprenticeship of not less than ninety percent (90%) of the prevailing journeyman hourly wage package in the apprenticeable occupation.~~

The minimum hourly wage package shall increase for each successfully completed period of apprenticeship to a higher percentage of the prevailing per diem wage package for journeymen in the apprenticeable occupation and geographic area. These periodic increases in percentage shall be equal (e.g., 40 percent, 50 percent, 60 percent, etc.) and shall be such that the minimum hourly wage package in the final period of apprenticeship is 80 percent of the prevailing per diem wage package for journeymen in the apprenticeable occupation and geographic area, as determined by the Director, using the rate effective on the immediately preceding March 1. At least 65 percent of this amount must be paid directly to the apprentice as taxable wages.

(6) At least 75 percent of each periodic increase in the hourly wage package as set out in Subsection (c)(5), above, must be paid directly to the apprentice in the form of taxable wages. For each period increase, any increase above the minimum hourly wage package is not subject to this restriction; Existing apprenticeship programs already approved by the DAS and the CAC which are not in compliance with any aspect of this Subsection (c) shall have until January 1, 2004², or until the expiration of the current collective bargaining agreement covering the program, whichever is later, to come into full compliance.

~~(7) Existing apprenticeship programs already approved by the DAS and the CAC which are not in compliance with any aspect of this total wage package formula for apprentices on all projects which are subject to Subsection (c) shall have one year from the effective date of this regulation (10/6/95), or until the expiration of the current collective bargaining agreement covering the program, whichever is later, to come into full compliance.~~

(8) By the enactment of this regulation, it is not the CAC's intent to change the manner by which the Director of Industrial Relations currently determines the prevailing wage rate, and the provisions of this Subsection (c) shall not be used to determine the prevailing wage rate.

(8) After January 1, 2002, all contractors employing registered apprentices shall pay not less than the minimum wages required by this subsection (c).

(d) For All Apprentices

Nothing in this Section shall permit the payment of less than the minimum wage prescribed by the Federal Fair Labor Standards Act or any applicable State minimum wage order.

NOTE: Authority cited: Section 3071, Labor Code. Reference: Section 3071, Labor Code.

Article 4. Apprenticeship Standards

Amend section to read:

212. Content of Apprenticeship Program Standards.

Apprenticeship programs shall be established by written apprenticeship standards which must be approved by the Chief DAS under Section 212.2. In order to be approved, the standards must cover all work performed processes within the apprenticeable occupation. The standards also must contain:

(a) ~~Evidence of:~~

~~(1) work site facilities and equipment sufficient to train the apprentices;~~

~~(2) skilled workers as trainers at the work site who meet the criteria for journey person or instructor as defined in Section 205(a) or (b);~~

~~(3) adequate arrangements for related and supplemental instruction pursuant to Labor Code section 3074;~~

~~(4) — ability to offer training and supervision in all work processes of the apprenticeable occupation;~~

~~(5) — provisions for evaluation of on-the-job training and related and supplemental instruction;~~

~~(6) — compliance with applicable federal regulations and standards for the apprenticeable occupation involved;~~

~~(7) — the program's ability, including financial ability, and commitment to meet and carry out its responsibility under the federal and state law and regulations applicable to the apprenticeable occupation and for the welfare of the apprentice;~~

~~(8) — the program's ability and commitment to train apprentices in accordance with current industry and/or trade specific training criteria, work processes, and related and supplemental instruction;~~

(ba) A statement of:

(1) the occupation(s) and an outline of the work processes in which the apprentice will receive supervised work experience and training on the job, and the allocation of the approximate time to be spent in each major process;

(2) the parties to whom the standards apply, and the program sponsor's labor market area, as defined by Section 215 appendix 2(l), for purposes of meeting equal employment opportunity goals in apprenticeship training; and the program's geographic area of operation as defined by section 205 (n);

(3) the definition and duties of the apprentice;

(4) the working conditions of the apprentice's working conditions unique to the program;

(5) the progressively increasing wage, employee benefits and other compensation of the apprentice, as set by Section 208;

(6) the ratio ~~or number~~ of apprentices to journeymen, or the number of apprentices to be employed, and the method used to determine the ratio whether by job site, workforce, department or plant;

(7) ~~the mechanism that will be used to provide apprentices with reasonably continuous employment in the event of a lay off or the inability of an employer to provide training in all work processes as outlined in the standards~~ the local education agency which has agreed to provide the related and supplemental instruction, and a description of the courses to be provided;

~~(8) — the procedure for incorporating the provisions of the standards into the apprentice agreement;~~

~~(9) — the procedure utilized for the periodic review and evaluation of the apprentice's progress in job performance and related instruction; the procedure utilized for the maintenance of appropriate progress records; and the procedure utilized for the recording and maintenance of all records concerning apprenticeship and otherwise required by law.~~

(eb) Provisions for:

(1) establishment of an apprenticeship committee, if applicable;

(2) administration of the standards;

(3) establishment of rules and regulations governing the program; An apprenticeship program standards or rules may provide for a period of probation which may not be for more than the combination of 1,000 hours of employment and not more than 72 hours of related instruction.

(4) determining the qualifications of employers if other than single employer programs and an orientation, workshop, or other educational session for employers to explain the apprenticeship program's standards and the operation of the apprenticeship program;

(5) determining the qualifications of apprentice applicants; fair and impartial treatment of applicants for apprenticeship, selected through uniform selection procedures, which shall be an addendum to the standards, pursuant to Section 215;

(6) the incorporation of the provisions of the standards into the apprentice agreement either directly or by reference

(67) a procedure to be utilized for the recording and maintenance of all records concerning apprenticeship and otherwise required by law including a system for recording the apprentice's worksite job progress and progress in related and supplemental instruction and a system for the periodic review and evaluation of the apprentice's progress in job performance and related instruction; and

~~(7) — progressively increasing the wages of the apprentice consistent with the skill acquired.~~

(8) discipline of apprentices for failure to fulfill their obligations on-the-job or in related instruction, including provisions for fair hearings;

(9) terminating, or recommending the cancellation of, apprentice agreements in accordance with section 208207;

(10) recommending issuance of State Certificates of Completion of Apprenticeship pursuant to Section 224;

~~(11) revising standards as needed;~~

~~(12) safe equipment;~~

(131) facilities for training and supervision, both on the job and in related instruction, in first aid, safe working practices and the recognition of health and safety hazards;

(142) training in the recognition of illegal discrimination and sexual harassment;

~~(15) fair and impartial treatment of applicants for apprenticeship, selected through uniform selection procedures, which shall be an addendum to the standards, pursuant to Section 215;~~

~~(16) mobility between employers when essential to provide exposure and training in various work processes in the apprenticeable occupation;~~

~~(17) approval of the standards by the Chief DAS;~~

(183) an adequate the mechanism to be used for the rotation of the apprentice from work process to work process to assure the apprentice of complete training in the apprenticeable occupation including mobility between employers when essential to provide exposure and training in various work processes in the apprenticeable occupation; and an adequate mechanism that will be used to provide apprentices with reasonably continuous employment in the event of a lay-off or the inability of one employer to provide training in all work processes as outlined in the standards;

~~(19) an orientation, workshop, or other educational session for employers to explain the apprenticeship program's standards and the operation of the apprenticeship program;~~

(14) approval of the standards, and revisions to the standards, by the Chief DAS;

(2015) the on-going evaluation of the interest and capacity of individual employers to participate in the apprenticeship program and to train apprentices on-the-job and provisions for the evaluation of on-the-job training and related and supplemental instruction;

(16) compliance with training criteria where such have been adopted pursuant to Section 212.01.

(17) meaningful representation of the interests of apprentices in the management of the program, which is shown where:

~~(A) In a joint labor-management sponsored program, the apprentices participating in that program are represented by a labor organization pursuant to one of the following: National Labor Relations Act, the Railway Labor Act, the California Public Employee Relations Act, Agricultural Labor Relations Act, the Meyers Milne Brown Act;~~

~~(B) In a program sponsored by more than one employer or an association of employers, the apprentices participating in that program are equally represented on the apprenticeship committee and subcommittees responsible for the operation of the program by representatives of the apprentices' choice who shall have full voice and vote on the committee. The representatives of the apprentices shall be selected by way of a secret ballot election among the apprentices to be conducted no less than once every two (2) years.~~

In a program sponsored by more than one employer or an association of employers, the apprentices participating in that program are at least equally represented on an advisory panel established by the apprenticeship committee responsible for the operation of the program. The apprentices shall be represented on the advisory panel by at least three representatives of the apprentices' choice who shall have full voice and vote on the panel except as to financial matters or matters that relate to the administration or structure of an employee benefit plan or the administration or operation of a trust fund. The representatives of the apprentices shall be selected by way of a secret ballot election among the apprentices conducted by the apprenticeship program no less than once every two (2) years. This advisory panel shall meet not less than once every quarter to address issues and concerns raised by and affecting the apprentices in the program.

(dc) The names and signatures of the parties.

NOTE: Authority cited: Section 3071, Labor Code. Reference: Sections 3071, 3073, 3075, 3060 and 3078, Labor Code.

Amend section heading and reference to read:

212.01. Industry-Specific Training Criteria.

NOTE: Authority cited: Section 3071, Labor Code. Reference: Sections 3073, 3073.2 and 3078, Labor Code.

Add new section to read:

212.05. Apprenticeship Training Needs

For purposes of determining whether the apprentice training needs in the building and construction trades justify the approval of a new apprenticeship program:

(a) An apprenticeship program approved under this chapter serving the same craft or trade and geographic area is shown to exist where there is one or more existing apprenticeship program(s) that has a geographic area of operation which includes substantially the same geographic area as the proposed new program and which provide(s)

training in substantially the same work processes as are proposed to be included in the new program. The "same geographic area" includes neighboring counties from which employees routinely commute to secure similar employment.

(b) An existing apprenticeship program approved under this chapter serving the same craft or trade and geographic area is shown not to have the capacity, or to have neglected or refused, to dispatch sufficient apprentices to qualified employers at a public works site where the program has repeatedly failed to provide apprentices. A temporary shortage of apprentices caused by a high volume of employment does not constitute a pattern of regular or repeated failure to provide apprentices;

(c) The California Apprenticeship Council shall identify existing apprenticeship program(s) approved under this chapter as deficient in meeting their obligations under this chapter where:

(1) The Division, through an audit of the program pursuant to Section 3073.1 of the Labor Code under 212.3 has determined that the program has failed to correct or remedy those identified deficiencies after having been given an opportunity to do so; or

(2) The Administrator of Apprenticeship or the California Apprenticeship Council has issued a decision(s) which has become final sustaining as meritorious two (2) charges filed against the program alleging that the program has failed to meet its obligations under this chapter, excluding complaints brought by an apprentice challenging or seeking review of a decision of a program sponsor concerning discipline of the apprentice or removal of the apprentice from the program.

(d) Notwithstanding subdivision (b) of Section 3075 of the Labor Code, the following special circumstances will justify the approval of a new apprenticeship program:

(1) Where a government declared state of emergency exists requiring a large influx of new apprentices in a particular craft or trade and the existing approved program(s) serving that craft or trade in the same geographic area do not have the ability or financial resources to provide training to the increased number of apprentices; or

(2) Where new technologies and/or work methods are required to be taught in a particular craft or trade and the existing approved program(s) serving that craft or trade in the same geographic area do not have the ability or financial resources to provide training in the new technologies and/or work methods.

(3) Where the Chief DAS finds that an unmet demand for apprentices exists in the particular craft or trade and geographic area, that the existing program(s) do not have the ability or intent to meet that demand, and that the unmet demand will be sufficient to sustain a viable additional apprenticeship program.

(e) For the purpose of Labor Code Section 3075(b), a program sponsor shall be considered to have requested approval of a "new apprenticeship program" where the program sponsor requests initial approval of a program, or approval of a revision to change a program's

apprenticeable occupation, or where the program sponsor requests approval to change the program's labor market area, or geographic area of operation to include a different labor market area, as defined by Section 215 appendix 2(I), that is not a reasonably justified expansion of the existing labor market area.

NOTE: Authority cited: Section 3071, Labor Code. Reference: Section 3075, Labor Code.

Amend section to read:

212.4. Deregistration of Programs.

The deregistration of a program cancels the approval of a program to operate.

(a) The Chief DAS shall deregister an apprenticeship program upon the request of the sponsor as long as within fifteen days of the Chief's acknowledgment of the request for deregistration, the sponsor shall inform each apprentice in writing of the deregistration, the proposed effective date of the deregistration and the names and addresses of other programs in the area. The Chief shall not deregister the program unless the sponsor complies with this requirement.

(b) The Chief may deregister an apprenticeship program, if the program is not conducted, operated and administered in accordance with applicable federal and state law and regulations and the program's approved apprenticeship standards, or if a program has had no active apprentices for a period of two (2) years; except that deregistration proceedings for violation of equal opportunity requirements shall be processed in accordance with Section 215;

(1) If the Chief has information that a program is not being operated in accordance with applicable federal and state law and regulations and the program's approved apprenticeship standards, the Chief shall so notify the program sponsor in writing sent by registered or certified mail, with return receipt requested. The notice shall identify the violation and the action needed to correct the violation. The notice shall state that the program will be deregistered unless ~~the violation is corrected in~~ corrective action is effected within thirty days. Upon a showing of good cause, the Chief may grant the sponsor an additional sixty days ~~to correct the violation~~ a reasonable extension of time to achieve corrective action. Where the Chief has information that a program has had no active apprentices for a period of two (2) years, that shall be considered grounds for deregistration and the Chief shall notify the program sponsor in writing as set forth above that the program will be deregistered unless the program can show good cause within thirty (30) days why it should not be deregistered.

(2) The Chief shall assist advise the sponsor in every reasonable way to help the program sponsor correct the violation;

STATE OF CALIFORNIA

GRAY DAVIS, Governor

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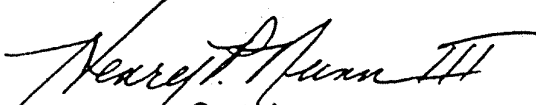
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Sincerely,



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(2) After approval by the joint apprenticeship committee, the agreement shall be sent to DAS for registration within thirty (30) days of its execution.

(3) DAS shall register the agreement if DAS determines that it was approved in accordance with the requirements set out above, under subsection (a)(1), and it was submitted to DAS within thirty (30) days of its execution.

(4) Within thirty (30) days of receipt of the agreement, DAS shall either register the agreement or return it to the program sponsor with the reasons for non-registration. If, registered, the registration shall be effective as of the date of its execution by the apprentice.

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registered and shall be returned to the program sponsor within 30 days with the reasons for non-approval.

NOTE: Authority cited: Section 3071, Labor Code. Reference: Sections 3071, 3079 and 3080, Labor Code.

Article 3. Standards for Minimum Wages, Maximum Hours and Working Conditions

Amend section to read:

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(a) For Apprentices In All Occupations Except The Building And Construction Industry:

For apprentices participating in approved apprenticeship programs in all industries, except the building and construction industry, the beginning wage rate, employee benefits and other compensation, and the progression of those rates, shall be decided by the sponsoring program in consultation with and subject to the approval of the Chief DAS.

(b) For Apprentices In The Building And Construction Industry Employed On Public Works Projects:

For apprentices participating in approved apprenticeship programs in the building and construction industry, the wages and employer payments for employee benefits as defined in 8 C.C.R. § 16000 for regular and overtime work while employed on public works projects within the meaning of Labor Code § 1720 et seq. shall be not less than the per diem wage rates for apprentices in the apprenticeable occupation as determined by the Director of Industrial Relations in the geographic area of the project.

(c) For Apprentices In The Building And Construction Industry Employed On Projects Not Covered By Subsection (b), Above:

The hourly wage package as used herein consists of the total of the wages and employer payments for employee benefits as defined in 8 C.C.R. § 16000. For apprentices participating in approved apprenticeship programs in the building and construction industry, the minimum hourly wage package for apprentices while employed on projects not covered by Subsection (b) above shall be calculated as follows:

(1) ~~The hourly wage package for first period apprentices shall be no less than 140 percent of the annual poverty level rate for a family of three (3) published by the United States Department of Health and Human Services in the February preceding the rate determination, (beginning with the February, 1994 published rate), which annual rate shall then be divided by 1,936 hours to determine the hourly wage package~~ Where the apprentice is

~~covered by a collective bargaining agreement that contains an hourly wage package for apprentices, the minimum hourly wage package shall be in accordance with the terms of the collective bargaining agreement. A starting hourly wage package for first-period apprentices of not less than 40 percent of the prevailing per diem wage package for journeymen in the apprenticeable occupation and geographic area, as determined by the Director of Industrial Relations for purposes of Labor Code § 1720 et seq., using the rate effective on the immediately preceding March 1. At least 65 percent of this amount must be paid directly to the apprentice as taxable wages.~~

(2) A minimum of 85 percent of the hourly wage package as determined by the formula above must be paid directly to the apprentice as taxable wages; ~~Where the apprentice is not covered by a collective bargaining agreement, or the collective bargaining agreement does not contain an hourly wage package for apprentices, the minimum hourly wage package shall be not less than the lower of the following:~~

~~(A) Fifty percent (50%) of the prevailing journeymen's hourly wage package as published by the Director of Industrial Relations for the apprenticeable occupation in the geographic area of the project; or~~

~~(B) If there is a collectively bargained hourly wage package for apprentices in the same apprenticeable occupation and geographic area, the hourly wage package set by the collective bargaining agreement.~~ If there is no prevailing wage rate determined by the Director for journeymen for the apprenticeable occupation and geographic area, a starting wage rate decided by the sponsoring program in consultation with and subject to the approval of the Chief DAS based on consideration of the minimum starting wage for apprentices in the most analogous occupations and geographic areas.

(3) Where an employer elects to satisfy a portion of the hourly wage package by employer payments for employee benefits as defined in 8 C.C.R. § 16000, the payment of such contributions must be verifiable; and the cost of the benefit(s) must be reasonably related to the amount of the contribution(s). The employer shall submit its books and records to an audit by the DAS staff, upon request, to verify such payments;

(4) ~~The hourly wage package for first period apprentices shall be recalculated as of January 1 of every odd numbered year using the formula set out in Subsection (c)(1) above, and shall be based upon the figures published by the United States Department of Health and Human Services in February of the year preceding the recalculation. The recalculated hourly wage package for first period apprentices shall automatically become effective as of January 1 of each year in which it is recalculated for all new apprentices indentured after January 1 of that year.~~ Where an employer elects not to satisfy a portion of the apprentice's hourly wage package by employer payments for employee benefits as defined in 8 CCR § 16000, the employer shall pay the entire hourly wage package directly to the apprentice on the apprentice's paycheck. Where an employer elects to satisfy a portion of the apprentice's hourly wage package by employer payments for employee benefits, the employer shall pay the remainder of the apprentice's hourly wage package directly to the apprentice on the apprentice's paycheck;

(5) ~~Each apprentice shall receive periodic, equal percentage increases in the hourly wage package for each successfully completed period of apprenticeship, subject to the following conditions:~~ The minimum amount of the periodic, equal percentage increases must be sufficient to insure that in no event shall the apprentice's hourly wage package in the final period of apprenticeship be less than 100 percent of the hourly wage package required under Subsection (c)(1), above, in effect during the apprentice's first period of apprenticeship;

~~(A) Where the apprentice is covered by a collective bargaining agreement, the hourly wage package progression schedule shall be in accordance with the terms of the collective bargaining agreement, if contained therein;~~

~~(B) Where the apprentice is not covered by a collective bargaining agreement or where the apprentice is covered by a collective bargaining agreement, but a wage package progression schedule is not contained therein, the hourly wage package pay progression schedule shall be determined by the program sponsor in consultation with and subject to the approval of the Chief. Every pay progression schedule determined in consultation with the Chief shall provide for:~~

~~(i) Increase in the apprentice's hourly wage package of not less than ten percent (10%) of the prevailing journeyman hourly wage package in the apprenticeable occupation per year, where the entry wage package is based upon fifty percent (50%) of the current journeyman hourly wage package; and~~

~~(ii) An hourly wage package in the final period of apprenticeship of not less than ninety percent (90%) of the prevailing journeyman hourly wage package in the apprenticeable occupation.~~

The minimum hourly wage package shall increase for each successfully completed period of apprenticeship to a higher percentage of the prevailing per diem wage package for journeymen in the apprenticeable occupation and geographic area. These periodic increases in percentage shall be equal (e.g., 40 percent, 50 percent, 60 percent, etc.) and shall be such that the minimum hourly wage package in the final period of apprenticeship is 80 percent of the prevailing per diem wage package for journeymen in the apprenticeable occupation and geographic area, as determined by the Director, using the rate effective on the immediately preceding March 1. At least 65 percent of this amount must be paid directly to the apprentice as taxable wages.

(6) At least 75 percent of each periodic increase in the hourly wage package as set out in Subsection (c)(5), above, must be paid directly to the apprentice in the form of taxable wages. For each period increase, any increase above the minimum hourly wage package is not subject to this restriction; Existing apprenticeship programs already approved by the DAS and the CAC which are not in compliance with any aspect of this Subsection (c) shall have until January 1, 2004², or until the expiration of the current collective bargaining agreement covering the program, whichever is later, to come into full compliance.

~~(7) Existing apprenticeship programs already approved by the DAS and the CAC which are not in compliance with any aspect of this total wage package formula for apprentices on all projects which are subject to Subsection (c) shall have one year from the effective date of this regulation (10/6/95), or until the expiration of the current collective bargaining agreement covering the program, whichever is later, to come into full compliance.~~

(8) By the enactment of this regulation, it is not the CAC's intent to change the manner by which the Director of Industrial Relations currently determines the prevailing wage rate, and the provisions of this Subsection (c) shall not be used to determine the prevailing wage rate.

(8) After January 1, 2002, all contractors employing registered apprentices shall pay not less than the minimum wages required by this subsection (c).

(d) For All Apprentices

Nothing in this Section shall permit the payment of less than the minimum wage prescribed by the Federal Fair Labor Standards Act or any applicable State minimum wage order.

NOTE: Authority cited: Section 3071, Labor Code. Reference: Section 3071, Labor Code.

Article 4. Apprenticeship Standards

Amend section to read:

212. Content of Apprenticeship Program Standards.

Apprenticeship programs shall be established by written apprenticeship standards which must be approved by the Chief DAS under Section 212.2. In order to be approved, the standards must cover all work performed processes within the apprenticeable occupation. The standards also must contain:

(a) ~~Evidence of:~~

~~(1) work site facilities and equipment sufficient to train the apprentices;~~

~~(2) skilled workers as trainers at the work site who meet the criteria for journey person or instructor as defined in Section 205(a) or (b);~~

~~(3) adequate arrangements for related and supplemental instruction pursuant to Labor Code section 3074;~~

~~(4) — ability to offer training and supervision in all work processes of the apprenticeable occupation;~~

~~(5) — provisions for evaluation of on-the-job training and related and supplemental instruction;~~

~~(6) — compliance with applicable federal regulations and standards for the apprenticeable occupation involved;~~

~~(7) — the program's ability, including financial ability, and commitment to meet and carry out its responsibility under the federal and state law and regulations applicable to the apprenticeable occupation and for the welfare of the apprentice;~~

~~(8) — the program's ability and commitment to train apprentices in accordance with current industry and/or trade specific training criteria, work processes, and related and supplemental instruction;~~

(ba) A statement of:

(1) the occupation(s) and an outline of the work processes in which the apprentice will receive supervised work experience and training on the job, and the allocation of the approximate time to be spent in each major process;

(2) the parties to whom the standards apply, and the program sponsor's labor market area, as defined by Section 215 appendix 2(l), for purposes of meeting equal employment opportunity goals in apprenticeship training; and the program's geographic area of operation as defined by section 205 (n);

(3) the definition and duties of the apprentice;

(4) the working conditions of the apprentice's working conditions unique to the program;

(5) the progressively increasing wage, employee benefits and other compensation of the apprentice, as set by Section 208;

(6) the ratio ~~or number~~ of apprentices to journeymen, or the number of apprentices to be employed, and the method used to determine the ratio whether by job site, workforce, department or plant;

(7) ~~the mechanism that will be used to provide apprentices with reasonably continuous employment in the event of a lay off or the inability of an employer to provide training in all work processes as outlined in the standards~~ the local education agency which has agreed to provide the related and supplemental instruction, and a description of the courses to be provided;

~~(8) — the procedure for incorporating the provisions of the standards into the apprentice agreement;~~

~~(9) — the procedure utilized for the periodic review and evaluation of the apprentice's progress in job performance and related instruction; the procedure utilized for the maintenance of appropriate progress records; and the procedure utilized for the recording and maintenance of all records concerning apprenticeship and otherwise required by law.~~

(eb) Provisions for:

(1) establishment of an apprenticeship committee, if applicable;

(2) administration of the standards;

(3) establishment of rules and regulations governing the program; An apprenticeship program standards or rules may provide for a period of probation which may not be for more than the combination of 1,000 hours of employment and not more than 72 hours of related instruction.

(4) determining the qualifications of employers if other than single employer programs and an orientation, workshop, or other educational session for employers to explain the apprenticeship program's standards and the operation of the apprenticeship program;

(5) determining the qualifications of apprentice applicants; fair and impartial treatment of applicants for apprenticeship, selected through uniform selection procedures, which shall be an addendum to the standards, pursuant to Section 215;

(6) the incorporation of the provisions of the standards into the apprentice agreement either directly or by reference

(67) a procedure to be utilized for the recording and maintenance of all records concerning apprenticeship and otherwise required by law including a system for recording the apprentice's worksite job progress and progress in related and supplemental instruction and a system for the periodic review and evaluation of the apprentice's progress in job performance and related instruction; and

~~(7) — progressively increasing the wages of the apprentice consistent with the skill acquired.~~

(8) discipline of apprentices for failure to fulfill their obligations on-the-job or in related instruction, including provisions for fair hearings;

(9) terminating, or recommending the cancellation of, apprentice agreements in accordance with section 208207;

(10) recommending issuance of State Certificates of Completion of Apprenticeship pursuant to Section 224;

~~(11) revising standards as needed;~~

~~(12) safe equipment;~~

(131) facilities for training and supervision, both on the job and in related instruction, in first aid, safe working practices and the recognition of health and safety hazards;

(142) training in the recognition of illegal discrimination and sexual harassment;

~~(15) fair and impartial treatment of applicants for apprenticeship, selected through uniform selection procedures, which shall be an addendum to the standards, pursuant to Section 215;~~

~~(16) mobility between employers when essential to provide exposure and training in various work processes in the apprenticeable occupation;~~

~~(17) approval of the standards by the Chief DAS;~~

(183) an adequate the mechanism to be used for the rotation of the apprentice from work process to work process to assure the apprentice of complete training in the apprenticeable occupation including mobility between employers when essential to provide exposure and training in various work processes in the apprenticeable occupation; and an adequate mechanism that will be used to provide apprentices with reasonably continuous employment in the event of a lay-off or the inability of one employer to provide training in all work processes as outlined in the standards;

~~(19) an orientation, workshop, or other educational session for employers to explain the apprenticeship program's standards and the operation of the apprenticeship program;~~

(14) approval of the standards, and revisions to the standards, by the Chief DAS;

(2015) the on-going evaluation of the interest and capacity of individual employers to participate in the apprenticeship program and to train apprentices on-the-job and provisions for the evaluation of on-the-job training and related and supplemental instruction;

(16) compliance with training criteria where such have been adopted pursuant to Section 212.01.

(17) meaningful representation of the interests of apprentices in the management of the program, which is shown where:

~~(A) In a joint labor-management sponsored program, the apprentices participating in that program are represented by a labor organization pursuant to one of the following: National Labor Relations Act, the Railway Labor Act, the California Public Employee Relations Act, Agricultural Labor Relations Act, the Meyers Milne Brown Act;~~

~~(B) In a program sponsored by more than one employer or an association of employers, the apprentices participating in that program are equally represented on the apprenticeship committee and subcommittees responsible for the operation of the program by representatives of the apprentices' choice who shall have full voice and vote on the committee. The representatives of the apprentices shall be selected by way of a secret ballot election among the apprentices to be conducted no less than once every two (2) years.~~

In a program sponsored by more than one employer or an association of employers, the apprentices participating in that program are at least equally represented on an advisory panel established by the apprenticeship committee responsible for the operation of the program. The apprentices shall be represented on the advisory panel by at least three representatives of the apprentices' choice who shall have full voice and vote on the panel except as to financial matters or matters that relate to the administration or structure of an employee benefit plan or the administration or operation of a trust fund. The representatives of the apprentices shall be selected by way of a secret ballot election among the apprentices conducted by the apprenticeship program no less than once every two (2) years. This advisory panel shall meet not less than once every quarter to address issues and concerns raised by and affecting the apprentices in the program.

(dc) The names and signatures of the parties.

NOTE: Authority cited: Section 3071, Labor Code. Reference: Sections 3071, 3073, 3075, 3060 and 3078, Labor Code.

Amend section heading and reference to read:

212.01. Industry-Specific Training Criteria.

NOTE: Authority cited: Section 3071, Labor Code. Reference: Sections 3073, 3073.2 and 3078, Labor Code.

Add new section to read:

212.05. Apprenticeship Training Needs

For purposes of determining whether the apprentice training needs in the building and construction trades justify the approval of a new apprenticeship program:

(a) An apprenticeship program approved under this chapter serving the same craft or trade and geographic area is shown to exist where there is one or more existing apprenticeship program(s) that has a geographic area of operation which includes substantially the same geographic area as the proposed new program and which provide(s)

training in substantially the same work processes as are proposed to be included in the new program. The "same geographic area" includes neighboring counties from which employees routinely commute to secure similar employment.

(b) An existing apprenticeship program approved under this chapter serving the same craft or trade and geographic area is shown not to have the capacity, or to have neglected or refused, to dispatch sufficient apprentices to qualified employers at a public works site where the program has repeatedly failed to provide apprentices. A temporary shortage of apprentices caused by a high volume of employment does not constitute a pattern of regular or repeated failure to provide apprentices;

(c) The California Apprenticeship Council shall identify existing apprenticeship program(s) approved under this chapter as deficient in meeting their obligations under this chapter where:

(1) The Division, through an audit of the program pursuant to Section 3073.1 of the Labor Code under 212.3 has determined that the program has failed to correct or remedy those identified deficiencies after having been given an opportunity to do so; or

(2) The Administrator of Apprenticeship or the California Apprenticeship Council has issued a decision(s) which has become final sustaining as meritorious two (2) charges filed against the program alleging that the program has failed to meet its obligations under this chapter, excluding complaints brought by an apprentice challenging or seeking review of a decision of a program sponsor concerning discipline of the apprentice or removal of the apprentice from the program.

(d) Notwithstanding subdivision (b) of Section 3075 of the Labor Code, the following special circumstances will justify the approval of a new apprenticeship program:

(1) Where a government declared state of emergency exists requiring a large influx of new apprentices in a particular craft or trade and the existing approved program(s) serving that craft or trade in the same geographic area do not have the ability or financial resources to provide training to the increased number of apprentices; or

(2) Where new technologies and/or work methods are required to be taught in a particular craft or trade and the existing approved program(s) serving that craft or trade in the same geographic area do not have the ability or financial resources to provide training in the new technologies and/or work methods.

(3) Where the Chief DAS finds that an unmet demand for apprentices exists in the particular craft or trade and geographic area, that the existing program(s) do not have the ability or intent to meet that demand, and that the unmet demand will be sufficient to sustain a viable additional apprenticeship program.

(e) For the purpose of Labor Code Section 3075(b), a program sponsor shall be considered to have requested approval of a "new apprenticeship program" where the program sponsor requests initial approval of a program, or approval of a revision to change a program's

apprenticeable occupation, or where the program sponsor requests approval to change the program's labor market area, or geographic area of operation to include a different labor market area, as defined by Section 215 appendix 2(I), that is not a reasonably justified expansion of the existing labor market area.

NOTE: Authority cited: Section 3071, Labor Code. Reference: Section 3075, Labor Code.

Amend section to read:

212.4. Deregistration of Programs.

The deregistration of a program cancels the approval of a program to operate.

(a) The Chief DAS shall deregister an apprenticeship program upon the request of the sponsor as long as within fifteen days of the Chief's acknowledgment of the request for deregistration, the sponsor shall inform each apprentice in writing of the deregistration, the proposed effective date of the deregistration and the names and addresses of other programs in the area. The Chief shall not deregister the program unless the sponsor complies with this requirement.

(b) The Chief may deregister an apprenticeship program, if the program is not conducted, operated and administered in accordance with applicable federal and state law and regulations and the program's approved apprenticeship standards, or if a program has had no active apprentices for a period of two (2) years; except that deregistration proceedings for violation of equal opportunity requirements shall be processed in accordance with Section 215;

(1) If the Chief has information that a program is not being operated in accordance with applicable federal and state law and regulations and the program's approved apprenticeship standards, the Chief shall so notify the program sponsor in writing sent by registered or certified mail, with return receipt requested. The notice shall identify the violation and the action needed to correct the violation. The notice shall state that the program will be deregistered unless ~~the violation is corrected in~~ corrective action is effected within thirty days. Upon a showing of good cause, the Chief may grant the sponsor an additional sixty days ~~to correct the violation~~ a reasonable extension of time to achieve corrective action. Where the Chief has information that a program has had no active apprentices for a period of two (2) years, that shall be considered grounds for deregistration and the Chief shall notify the program sponsor in writing as set forth above that the program will be deregistered unless the program can show good cause within thirty (30) days why it should not be deregistered.

(2) The Chief shall assist advise the sponsor in every reasonable way to help the program sponsor correct the violation;

(3) If the required correction is made, the Chief may periodically review the program to see that the correction is maintained.

(3 4) If the required correction is not completed, or if a program which has had no active apprentices for a period of two (2) years fails to show good cause ~~why~~ why it should not be deregistered, within the allotted time, the Chief shall send a notice to the sponsor, by registered or certified mail, return receipt requested. The notice shall:

(A) State that it is sent pursuant to this subsection;

(B) Indicate that the program has had no active apprentices for a period of two (2) years and has failed to show good cause why it should not be deregistered; or identify the violation with particularity; state when it was called to the sponsor's attention, identify the correction required and state that the sponsor has failed or refused to correct the violation;

(C) State that the Chief will recommend that the Administrator deregister the program unless the sponsor requests a hearing within fifteen days of the date of the notice;

(4 5) If the sponsor does not request a hearing, the Chief shall transmit to the Administrator of Apprenticeship a report containing all pertinent facts and circumstances concerning the violation, including the findings and recommendation for deregistration, and copies of all relevant documents and records. Statements concerning interviews, meetings and conferences shall include the time, date, place, and persons present. The Administrator of Apprenticeship shall make a final order on the basis of the record.

(5 6) If the sponsor requests a hearing, the Chief shall transmit to the Administrator of Apprenticeship a report containing all the data listed in subparagraph (4) above. The Administrator of Apprenticeship shall hold a hearing in accordance with Section 202, and shall make a final decision on the basis of the record, including the proposed findings and recommended decision of the Chief; ~~At the Administrator's discretion, he/she may allow the sponsor a reasonable additional period of time to achieve corrective action;~~

(6-7) The sponsor may appeal the Administrator's decision pursuant to Section 203; The decision of the Administrator concerning deregistration of a program shall be final and become an order of the Council unless an appeal is filed by the sponsor with the Council within thirty (30) days following the date the decision is issued. If the program is deregistered, and no appeal to the Council is filed, the deregistration shall be effective sixty (60) days following the date the Administrator's Decision was issued.

(8) The sponsor may appeal the Administrator's Decision to the Council. If an appeal is filed the procedures of Section 203(b) shall be followed. The Decision of the Council shall be final and shall be effective thirty (30) days following the date the Council's Decision is issued.

(3) If the required correction is made, the Chief may periodically review the program to see that the correction is maintained.

(3 4) If the required correction is not completed, or if a program which has had no active apprentices for a period of two (2) years fails to show good cause ~~why~~ why it should not be deregistered, within the allotted time, the Chief shall send a notice to the sponsor, by registered or certified mail, return receipt requested. The notice shall:

(A) State that it is sent pursuant to this subsection;

(B) Indicate that the program has had no active apprentices for a period of two (2) years and has failed to show good cause why it should not be deregistered; or identify the violation with particularity; state when it was called to the sponsor's attention, identify the correction required and state that the sponsor has failed or refused to correct the violation;

(C) State that the Chief will recommend that the Administrator deregister the program unless the sponsor requests a hearing within fifteen days of the date of the notice;

(4 5) If the sponsor does not request a hearing, the Chief shall transmit to the Administrator of Apprenticeship a report containing all pertinent facts and circumstances concerning the violation, including the findings and recommendation for deregistration, and copies of all relevant documents and records. Statements concerning interviews, meetings and conferences shall include the time, date, place, and persons present. The Administrator of Apprenticeship shall make a final order on the basis of the record.

(5 6) If the sponsor requests a hearing, the Chief shall transmit to the Administrator of Apprenticeship a report containing all the data listed in subparagraph (4) above. The Administrator of Apprenticeship shall hold a hearing in accordance with Section 202, and shall make a final decision on the basis of the record, including the proposed findings and recommended decision of the Chief; ~~At the Administrator's discretion, he/she may allow the sponsor a reasonable additional period of time to achieve corrective action;~~

(6-7) The sponsor may appeal the Administrator's decision pursuant to Section 203; The decision of the Administrator concerning deregistration of a program shall be final and become an order of the Council unless an appeal is filed by the sponsor with the Council within thirty (30) days following the date the decision is issued. If the program is deregistered, and no appeal to the Council is filed, the deregistration shall be effective sixty (60) days following the date the Administrator's Decision was issued.

(8) The sponsor may appeal the Administrator's Decision to the Council. If an appeal is filed the procedures of Section 203(b) shall be followed. The Decision of the Council shall be final and shall be effective thirty (30) days following the date the Council's Decision is issued.

(7 & 9) Upon issuance of the Administrator's Decision to deregister, an order of deregistration, the Administrator shall make public notice of ~~the order~~ this Decision and shall notify the sponsor and other programs in the same occupation and in the same labor market area. Within 15 days of service of the Administrator's Decision, ~~the effective date of the order~~ the sponsor shall notify each apprentice of the Administrator's Decision to deregister ~~deregistration of the program and the effective date thereof~~. The sponsor shall inform each apprentice that if the deregistration decision becomes final, it automatically terminates the apprentice's individual registration. The sponsor shall provide each apprentice with the names and addresses of other programs in the area. Finally, the sponsor shall provide proof of said mailing to the Chief.

NOTE: Authority cited: Sections 3071 and 3081, Labor Code. Reference: Sections 3073, 3075, 3078, 3081, 3082, 3083 and 3090, Labor Code.

Article 10. Required Apprentices on Public Works Contract

230.1 Employment of Apprentices on Public Works

(a) Contractors and subcontractors, as defined in Section 201 to include general prime, specialty or subcontractor, shall employ registered apprentice(s), as defined by Labor Code Section 3077, during the performance of a public work project in accordance with the required 1 hour of apprentices work performed by an apprentice for every five hours of labor performed by a journeyman ~~4:5 ratio of apprentice to journeymen hours~~, unless covered by one of the exemptions enumerated in Labor Code Section 1777.5 or Section 218(b) of these regulations. Unless an exemption has been granted, the contractor or subcontractor shall employ apprentices for the number of hours computed above before the end of the contract. Registered apprentices can only be obtained from the Apprenticeship Committee that has approved the contractor to train apprentices of the craft or trade in the area of the site of the public work. Contractors who are not already approved to train by an applicable joint apprenticeship committee or unilateral committee must request the dispatch of required apprentices from one of the applicable Apprenticeship Committees whose geographic area of operation includes the site of the public work by giving the committee actual notice of at least 48 hours (excluding Saturdays, Sundays and holidays) before the date on which one or more apprentices are required. However, if a non-signatory contractor or subcontractor declines to abide by and comply with the terms of a local committee's standards, the Apprenticeship Committee shall not be required to dispatch apprentices to such contractor or subcontractor. Conversely, if an Apprenticeship Committee does not dispatch any apprentice in response to a written request to a contractor or subcontractor who has agreed to employ and train apprentices in accordance with either the Apprenticeship Committee's Standards or these regulations within 72 48 hours of such request notice (excluding Saturdays, Sundays and holidays) the contractor or subcontractor shall not be considered in violation of this section as a result of failure ~~excused from the obligation to employ apprentices for the remainder of the project, provided that the contractor or subcontractor made the request in enough time to meet the above - stated ratio~~. If an Apprenticeship Committee dispatches fewer apprentices than

the contractor or subcontractor requested, the contractor or subcontractor shall be considered in compliance; if the contractor or subcontractor employs those apprentices who are dispatched, provided that where there is more than one Apprenticeship Committee able and willing to unconditionally dispatch apprentices, a contractor or subcontractor who is not a participant in an apprenticeship program has requested dispatch from at least two committees.

(b) Apprentices employed on public works shall be paid the applicable apprentice prevailing per diem wage rate, available from DAS, and derived from the Director's survey of wages paid on public works in the geographic area of the craft or trade. DAS shall refer all complaints alleging any contractor's failure to pay the proper apprentice prevailing wage rate on a public works to the Division of Labor Standards Enforcement for investigation and appropriate action.

(c) Apprentices employed on public works can only be assigned to perform work of the craft or trade to which the apprentice is registered. Work of the craft or trade consists of job duties normally assigned to journeymen in the apprenticeable occupation. Where an employer employs apprentices under the rules and regulations of the California Apprenticeship Council, as set forth in Labor Code Section 1777.5(c)(2), apprentices employed on public works must at all times work with or under the direct supervision of journeyman/men. The on-the-job training shall be in accordance with the apprenticeship standards and apprenticeship agreement under which the apprentice is training, provided that a contractor shall not be subject to any financial or administrative obligations to a trust fund or employee benefit plan unless the contractor has so agreed.

(d) Contractors who have bid or have been awarded public works projects prior to December 31, 1989 January 1, 2000 and contractors who have bid prior to December 31, 1989 January 1, 2000 and have been awarded public works projects after January 1, 1990 2000 shall comply with the provisions of Labor Code Section 1777.5 in effect prior to January 1, 1990 2000, as implemented by California Apprenticeship Council regulations in effect prior to January 1, 2000.

NOTE: Authority cited: Section 1777.7, Labor Code. Reference: Section 1777.5, Labor Code.

STATEMENT OF BOB BALGENORTH

The proposed regulations were the product of a great deal of work by the CAC and the advisory committee. We have now received comments on the proposed regulations in writing and at two public hearings. I have reviewed these comments very carefully. Many of them fail to understand that the CAC must implement AB 921. Some of the comments, however, are constructive and make valid points. I believe that we should respond to these comments today by approving the proposed regulations with amendments. These revised proposed regulations would then have to be sent out for an additional 15-day comment period. I would like to bring closure to the rulemaking process but I think it would be a mistake for the CAC not to make some amendments in response to the comments.

I have a written motion that sets out the amendments I am proposing. Many of them just fix technical errors and should be self-explanatory. There are three amendments I would like to explain:

First, we received many comments about the changes to section 208 concerning the minimum wage rates for apprentices on private construction projects. Some comments said that the CAC cannot or should not set minimum wage rates. I disagree. The Labor Code charges the CAC with setting minimum wage rates for apprentices. We need to set a minimum wage that is high enough to protect apprentices from exploitation and that is high enough to attract bright and enthusiastic people to learn a trade. An apprentice may be a single parent with a child to support. We cannot expect apprentices to take second jobs when they must be taking classes as well.

Many comments said that it is not fair to allow the minimum to be reduced by a collective bargaining agreement and that the proposed regulations are too complicated. Some of the comments also said that a starting minimum wage rate of 50 percent of the prevailing journeyman rate is too high. My proposal is that we respond to these comments by having the same minimum wage rate for union and non-union apprenticeship programs and that this minimum be set at 40 percent of the prevailing journeyman rate, rising to 80 percent of the journeyman rate for the final period of apprenticeship. Nothing in the regulation prevents employers from paying more than this minimum to apprentices on private projects. I personally think that apprentices should be paid at the same rate, regardless of whether they work on public or private projects.

If you look at the prevailing wage rates for apprentices that the director publishes, you will see that the starting total wage package is virtually always more than 40 percent of the journeyman total package and that the ending package is virtually always more than 80 percent of the journeyman total package. (Even in the very few cases where the starting wage is 35 percent of the basic rate, health benefits generally bring the total package to at least 40 percent of the journeyman total package.) This is a good indication that 40 percent and 80 percent are not too high as minimums. I personally would rather have 50 percent and 90 percent, but I am willing to compromise in response to the comments. Nothing in the regulation prevents

employers from paying more than the minimum.

Second, we received a great deal of criticism about the need standard in section 212.05. The fact of the matter is that the need standard was set by the Legislature, not the CAC. The CAC must implement it. Nevertheless, I am sensitive to the criticism that we should not restrict apprenticeship opportunities. Therefore, I am proposing we amend the regulations to add an additional "special circumstance" in which there is a need for a new program: "Where the Chief DAS finds that an unmet demand for apprentices exists in the particular craft or trade and geographic area, that the existing program(s) do not have the ability or intent to meet that demand, and that the unmet demand will be sufficient to sustain a viable additional apprenticeship program."

I think that this amendment implements what the Legislature intended. The Legislature understood the difference between increasing opportunities for quality apprenticeship and simply increasing the number of apprenticeship programs. The state, as well as unions, employers, and employer associations, put a great deal of resources into existing programs. If there is a good program that can meet the demand for apprentices, it doesn't make sense to be starting a new program. Employers who don't want to abide by the rules and regulations of the good program will start their own, fly-by-night program that has lower standards, and there will be a race to the bottom. Apprenticeship programs work best when a large number of employers participate so that the apprentice can be exposed to a variety of work environments and styles. Plus, the state has limited resources to support programs and DAS has limited resources to regulate them.

On the other hand, if there is an unmet need for apprentices, and the existing program is not going to meet that need, then there should not be a barrier to starting a new program. In particular, if there is a joint apprenticeship program that refuses to dispatch apprentices to a non-union contractor that wants to participate in apprenticeship training, then under the regulations the need standard is met.

Finally, there was criticism of the requirement that the apprenticeship standards ensure that the interests of apprentices be meaningfully represented. Again, this requirement was imposed by the Legislature. The CAC must implement it. In a joint program, there are labor representatives with an equal vote on the apprenticeship committee so the program cannot be run solely for the benefit of employers. There is no such requirement for a unilateral multi-employer program.

Nevertheless, we received comments saying that the CAC should not require equal representation of apprentices on the actual apprenticeship committee and that the proposed regulation creates problems under ERISA. Therefore, I am proposing that we instead require that the apprentices have representatives on an advisory panel for the program which must meet at least quarterly to address issues concerning the program. This advisory panel would not consider the financial aspects of the program or issues concerning the administration of employee benefit plans and trust funds. This responds fully to the concerns expressed by the comments.

MOTION

Adopt the proposed regulations with the following amendments:

206(b)(1) (on page 2):

At the end of the sentence, change "excecuation" to "execution"

208(b) (on page 3):

Change "shall be the per diem wage rates" to "shall be not less than the per diem wage rates"

208(c)(1) (on pages 3-4):

Replace proposed 208(c)(1) with: "(1) A starting hourly wage package for first-period apprentices of not less than 40 percent of the prevailing per diem wage package for journeymen in the apprenticeable occupation and geographic area, as determined by the Director of Industrial Relations for purposes of Labor Code §1720 et seq., using the rate effective on the immediately preceding March 1. At least 65 percent of this amount must be paid directly to the apprentice as taxable wages."

208(c)(2) (on page 4):

Replace proposed 208(c)(2) with: "(2) If there is no prevailing wage rate determined by the Director for journeymen for the apprenticeable occupation and geographic area, a starting wage rate decided by the sponsoring program in consultation with and subject to the approval of the Chief DAS based on consideration of the minimum starting wage for apprentices in the most analogous occupations and geographic areas."

208(c)(5) (on pages 4-5):

Replace proposed 208(c)(5) with the following: "The minimum hourly wage package shall increase for each successfully completed period of apprenticeship to a higher percentage of the prevailing per diem wage package for journeymen in the apprenticeable occupation and geographic area. These periodic increases in percentage shall be equal (e.g., 40 percent, 50 percent, 60 percent, etc.) and shall be such that the minimum hourly wage package in the final period of apprenticeship is 80 percent of the prevailing per diem wage package for journeymen in the apprenticeable occupation and geographic area, as determined by the Director, using the rate effective on the immediately preceding March 1. At least 65 percent of this amount must be paid directly to the apprentice as taxable wages."

208(c)(6) (on page 5):

Change date to "January 1, 2002."

206(c)(8) (on page 5):

Add a new subsection (c)(8): "(8) After January 1, 2002, all contractors employing registered apprentices shall pay not less than the minimum wages required by this Subsection (c)."

212(b)(9) (on page 8):

Change Section "208" to Section "207"

212(b)(17) (on page 9):

Replace proposed subsection with: "(17) In a program sponsored by more than one employer or an association of employers, the apprentices participating in that program are at least equally represented on an advisory panel established by the apprenticeship committee responsible for the operation of the program. The apprentices shall be represented on the advisory panel by at least three representatives of the apprentices' choice who shall have full voice and vote on the panel except as to financial matters or matters that relate to the administration or structure of an employee benefit plan or the administration or operation of a trust fund. The representatives of the apprentices shall be selected by way of a secret ballot election among the apprentices to be conducted by the apprenticeship program no less than once every two (2) years. This advisory panel shall meet not less than once every quarter to address issues and concerns raised by and affecting the apprentices in the program."

212.01 (on page 9):

Change "Industry Specific" to "Industry-Specific"

212.05(a) (on page 9):

In first sentence, change "includes the same geographic area" to "includes *substantially* the same geographic area." Delete second sentence.

212.05(d) (on page 10):

Add a new subsection (d)(3): "Where the Chief DAS finds that an unmet demand for apprentices exists in the particular craft or trade and geographic area, that the existing program(s) do not have the ability or intent to meet that demand, and that the unmet demand will be sufficient to sustain a viable additional apprenticeship program."

212.4(b)(4) (on page 16):

Change "whey" to "why"

212.4(b)(6) (on page 16):

Change "allow the sponsor reasonable additional period of time" to "allow the sponsor a reasonable period of time"

212.4(b)(7) (on pages 16-17):

Add the emphasized words: "The decision of the Administrator concerning deregistration of a program shall be final and become an order of the Council unless an appeal is filed by the sponsor with the Council within thirty (30) days following the date the decision is issued. If the program is deregistered, *and no appeal to the Council is filed*, the deregistration shall be effective sixty (60) days following the date the Administrator's Decision was issued."

212.4(b)(8) (on page 17):

Add the emphasized words: "The sponsor may appeal the Administrator's Decision to the Council. If an appeal is filed, the procedures of Section 203(b) shall be followed. The Decision of the Council shall be final and shall be effective thirty (30) days following the date the *Council's* Decision is issued."

230.1(a) (on page 20):

Delete two commas in the first part of the last sentence, so it begins: "If an apprenticeship committee dispatches fewer apprentices than the contractor or subcontractor requested, the contractor or subcontractor shall be considered in compliance if the contractor or subcontractor employed those apprentices who are dispatched,"

230.1(c) (on page 20):

Add a last sentence: "The on-the-job training shall be in accordance with the apprenticeship standards and apprenticeship agreement under which the apprentice is training, provided that a contractor shall not be subject to any financial or administrative obligations to a trust fund or employee benefit plan unless the contractor has so agreed."

A:\cac_reg_amendments.wpd

January 24, 2001 (11:52am)

U.S. Department of Labor

Employment and Training Administration
200 Constitution Avenue, N.W.
Washington, D.C. 20210



JAN 23 2001

Mr. Henry Nunn
Chief
Division of Apprenticeship Standards
Department of Industrial Relations
8th Floor
455 Golden Gate Avenue
San Francisco, California 94102

Dear Mr. Nunn:

The Office of Apprenticeship Training, Employer and Labor Services ("ATELS") has received copies of California Labor Code § 3075 (revised through Section 7 of Assembly Bill No. 921 and signed into law January 1, 2000), as well as proposed changes to Title 8 of the California Code of Regulations ("CCR"), Chapter 2, Part I, Apprenticeship.

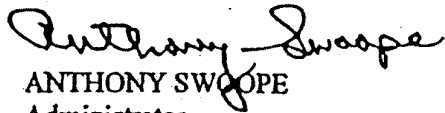
Labor Code § 3075(b) sets needs-based criteria for the approval of new apprenticeship programs in the building and construction trades. Proposed Section 212.05 of CCR Title 8 would implement the State's statutory mandate. The National Apprenticeship Act ("NAA"), 29 U.S.C. 50, as well as the implementing regulations at 29 CFR Part 29, require the Secretary of Labor to promote apprenticeship opportunities, while protecting the interests of apprentices. While the implementation of the California "needs" standard may benefit existing apprenticeship program sponsors and participants, it would not expand apprenticeship opportunities. Further, the ATELS has not been provided with information which would demonstrate that California's approach is necessary to safeguard the interests of current or potential apprentices. Accordingly, ATELS has preliminarily determined that § 3075(b) and proposed Section 212.05 are contrary to the mandate of the NAA and its implementing regulations.

We are requesting that the California Apprenticeship Council provide ATELS with information which would address the need for restrictions on the creation of new apprenticeship programs in the building and construction trades. This would enable ATELS to review the Council's rationale and consider if it adequately conforms with the Secretary's published standards for Federal purposes.

Once the Department of Labor has reviewed the pertinent information, we would like to schedule a meeting with the appropriate parties to discuss the issues raised and to explore how any differences can be resolved.

If you have any questions, please contact me at 202-693-2796.

Sincerely,



ANTHONY SWOPE

Administrator

Apprenticeship Training, Employer and Labor Services

cc: Stephen Smith, Director, Department of Industrial Relations

From: LINDA TRUED
To: LOIS K BEST
Date: Fri, Feb 16, 2001 3:06 PM
Subject: Re: Sarah

Just in case you read your e-mail before you listen to your messages, I have talked with Sarah and she said she will be there the whole week (3/5-9). She thinks maybe Sue might be thinking of the DC trip (which Sarah will be there even on the weekend - she will not be coming home). If you have any other questions, give me a call.

LT

>>> LOIS K BEST 02/16 1:35 PM >>>

I know we talked about Sarah's hotel needs for Chicago (arriving on 3/5 departing on 3/9). Sue has a notation that Sarah needs it for only 1 night, what night is that (3/5 I'm thinking)? Help me girl!!!!
Thanks.

U.S. Department of Labor

Employment and Training Administration
200 Constitution Avenue, NW
Washington, D.C. 20210



JAN 23 2001

000005

Mr. Henry Nunn
Chief
Division of Apprenticeship Standards
Department of Industrial Relations
8th Floor
455 Golden Gate Avenue
San Francisco, California 94102

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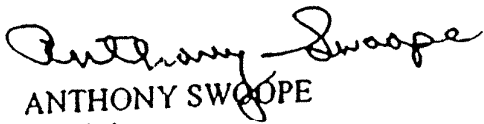
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If you have any questions, please contact me at 202-693-2796.

Sincerely,

A handwritten signature in cursive script that reads "Anthony Swoope".

ANTHONY SWOOPE

Administrator

Apprenticeship Training, Employer and Labor Services

cc: Stephen Smith, Director, Department of Industrial Relations